

Other commenters challenge Paragraph 70 of the Conditions, which provides that the Commission shall not consider the possible expiration of any of the Conditions to be a factor that would render a requested authorization under section 271 of the Act inconsistent with the public interest, convenience, and necessity. These commenters claim that this condition improperly limits the scope of the Commission's public interest inquiry under section 271. See, e.g., MCI WorldCom at 65; Sprint at 69-70. The Commission, however, has already rejected attempts by parties to conflate the merger review process with the section 271 inquiry. See, e.g., SBC/PacTel, 12 FCC Rcd at 2644, ¶ 42, 2662-63, ¶ 88. The proposed Conditions were crafted to deal expressly with concerns raised about the merger; they were not proposed to address, expand, or supplement section 271 issues or concerns.¹²⁴ To penalize SBC/Ameritech or any other RBOC in the section 271 process because SBC/Ameritech accepted market-opening provisions in this merger proceeding would be contrary to Commission precedent and sound policy. Furthermore, SBC/Ameritech's satisfaction of Track A (47 U.S.C. § 271(c)(1)(A)) and the competitive checklist under section 271 in any state will serve as confirmation that the local market-opening provisions of the proposed Conditions have served their purpose.

III. REQUESTS FOR ADDITIONAL CONDITIONS ARE UNNECESSARY AND UNRELATED TO THE MERGER

The proposed Conditions are more than adequate to guarantee that the merger's pro-competitive effects will far outweigh any potential for harm. Despite the extra protection the Conditions provide to the merger – a merger which is already in the public interest – several parties ask for still more concessions. These commenters ask the Commission to impose

¹²⁴ Because the conditions deal exclusively with this license transfer, they are not applicable to Section 271 applications filed by any BOC. See BellSouth at 2-4.

additional conditions or to alter the existing Conditions even though their alleged concerns bear no relationship to the merger. For these commenters, the merger is merely a platform to advance their own interests. Indeed, most of these commenters do not even mention the “public interest” standard.

Some commenters ask the Commission to impose conditions wholly unrelated to any alleged harm caused by the merger. For example, OMB Watch ignores the unprecedented ADSL conditions that the applicants have already proposed and asks the Commission to impose conditions that narrow “the growing divide between the information haves and the have-nots.” OMB Watch at 1; see also Low Income Coalition at 3-4. OMB does not attempt to – nor could it – link some groups’ lack of Internet access to effects of the merger. Similarly, commenters ask for a panoply of other perks – from voice mail to reformed billing practices to divestiture of loops¹²⁵ – without connecting their requests in any way to an alleged harm that would result from the merger. These requests could not possibly be tied to the merger. Yet such a link is necessary for the imposition of any condition. BA/NYNEX, 12 FCC Rcd at 20045, ¶ 117.

Many commenters also ask the Commission to impose conditions that are the subject of currently pending proceedings before the Commission or a state commission.¹²⁶ This merger

¹²⁵ NALA at 5-7 (asking for voice mail resale and reformed billing practices); Level 3, at 19 (requesting a condition whereby SBC/Ameritech hires an independent firm to evaluate the cost of divesting loops); Ntegrity at 9-10, 14-15 (seeking reformed billing and voice mail). The APPA goes even further – it wants the Commission to violate the First Amendment rights of SBC/Ameritech by preventing SBC/Ameritech from supporting any measure that prevents public power utilities from providing telecom services and requiring SBC/Ameritech to espouse that position before legislators and other high-level officials. APPA at 7.

¹²⁶ See, e.g., CTC at 4-7 (asking that SBC eliminate other resale charges approved by state commissions and termination liabilities); OpTel at 3 (seeking to have the merger conditioned on the settlement of a complaint in California regarding on-property wiring).

review is not an opportunity to supplant all pending state and other Commission proceedings,¹²⁷ nor is it an omnibus proceeding to address issues wholly unrelated to the merger. For example, the merger will have no effect on competition in the paging market. This proceeding, then, is not the appropriate forum to resolve the paging industry's ongoing battle with ILECs generally over interconnection and reciprocal compensation, see, e.g., PageNet at 2-3, PCIA at 2-4, especially when the Commission is considering these issues in another docket.¹²⁸ Nor is this the proper forum to consider SBC's or Ameritech's contacts with their former customers. See, e.g., ALTS at 28-29. Similarly, requests to classify various network elements as UNEs are properly resolved in the UNE remand proceeding, not here. See, e.g., Focal at 19 (requesting directory listings at cost-based prices); ALTS at 22-23 (requesting EELs); Level 3, at 14 (requesting EELs); MFN at 2-3 (asking for CATT connectivity).

¹²⁷ TDS Metrocom has requested that the Commission hold the merger proceeding in abeyance pending resolution of a complaint filed against Ameritech concerning local number portability. TDS at 2-9. As TDS Metrocom recognizes, TDS Metrocom has requested that the Commission commence an accelerated docket formal complaint proceeding, and Ameritech and TDS have engaged in precomplaint discussions. The Commission has not accepted TDS's complaint or initiated a formal complaint to date. This issue is most efficiently resolved in the context of that ongoing proceeding. Ameritech and its switch provider Lucent Technologies have submitted final reports to the Commission detailing the local number portability service outage that occurred and has sent detailed reports to TDS. See Letter filed June 25, 1999, from Anthony M. Alessi, Director, Federal Relations, Ameritech, to Dale Hatfield, Chief, Office of Engineering and Technology, FCC; Letter dated June 21, 1999, from Jamil Saad, Customer Technical Support Manager, Lucent Technologies, to Pat Forester, Network Services Division, Common Carrier Bureau, FCC. Ameritech, working with its equipment supplier, has taken, and continues to take, steps to prevent the recurrence of the outage problems experienced by TDS Metrocom.

¹²⁸ In any event, as SBC has pointed out elsewhere, these requests should be rejected on their merits. Nothing in the Commission's regulations permits the elimination of existing charges for facilities dedicated to paging interconnection. Moreover, by their terms, the Commission's reciprocal compensation regulations do not apply to LEC-paging interconnection. See Application for Review of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell, CCB/CPD Docket No. 97-24 (filed Jan. 29, 1998). In addition, the allegations that SBC has failed to negotiate in good faith with PageNet or any other paging provider are false. See PageNet at 2-3. SBC has entered into numerous interconnection agreements with paging providers that have been approved by state commissions. Indeed, it is the paging providers who largely have failed to request negotiations pursuant to the Act. And when the paging providers have made such requests, some have failed to comply with their obligations to negotiate in good faith.

The Commission has faced a similar grab-bag of requests for conditions in nearly all of its other license transfer review proceedings since the 1996 Act and has rejected each in turn, noting that requested conditions must focus on the harms that the merger is said to cause and should not involve issues addressed in other proceedings.¹²⁹

Various other commenters ask the Commission to impose conditions contrary to law. For example, Citizens Action of Illinois asks the Commission to prohibit further SBC/RBOC mergers. Citizens Action of Illinois at 1. It also asks that all pending and future RBOC mergers contain the same conditions proposed in this proceeding. Sections 214 and 310, however, require the Commission to evaluate each license transfer independently to determine if it is in the public interest. The Commission cannot – consistent with the most fundamental principles of due process and administrative law – decide whether an application is in the public interest by relying on the facts of another transfer.

MCI WorldCom would have the Commission condition approval of the merger on SBC/Ameritech's ability to obtain authority pursuant to section 271 to provide interLATA service in at least a majority of their in-region states. MCI WorldCom at 7. The Commission rejected this very request in its previous orders. And its rationale applies with equal force here:

¹²⁹ See, e.g., SBC/Pactel, 12 FCC Rcd at 2644, ¶ 42 (rejecting 271 arguments because they were unrelated to the subject of the merger proceeding); id. at 2648, ¶ 52 (refusing to consider entry into in-region long distance because it is not the subject of the merger proceeding); BA/NYNEX, 12 FCC Rcd at 20087, ¶ 220 (rejecting MCI's proposed Conditions relating to BOC billing and collection services for long distance because "[i]t is not clear . . . how the proposed Conditions would remedy the potential harms to competition that result from the merger"); id. at 20088, ¶ 221 (refusing to rule on MCI's petition for rulemaking for PIC freeze in the context of the merger because "[w]e lack here a sufficient record to conclude whether such a requirement would be in the public interest" and noting that those concerns should be addressed in the rulemaking proceeding); MCI WorldCom Merger Order, 13 FCC Rcd at 18115, ¶ 155 (refusing to require MCI WorldCom to adopt nondiscriminatory peering criteria because "the instant merger proceeding is not the appropriate forum to address these concerns"); id. at 18116-17, ¶¶ 159-160 (refusing to consider Telstra's claims regarding cost-sharing for international Internet services for the same reason); AT&T/TCI Merger Order, 14 FCC Rcd at 3180, ¶ 37 (refusing to impose restrictions that are "beyond the scope of

We do not believe that requiring the parties to delay consummation of the merger pending implementation of the checklist would further materially expedite full checklist implementation. We also note that merely delaying consummation of the merger does not serve to mitigate any potential harmful effects on competition, as it is unlikely that, during the period prior to consummation, Bell Atlantic would act as an independent entrant in the relevant markets. Moreover, the determination of whether the proposed merger is in the public interest has no bearing on the question of whether authorization of Bell Atlantic-NYNEX to provide in-region interLATA services would be consistent with the public interest, convenience, and necessity.

BA/NYNEX, 12 FCC Rcd at 20080, ¶ 203; see also SBC/PacTel, 12 FCC Rcd at 2662-63, ¶ 88.

What MCI Worldcom seeks – adding the statutory requirements for in-region, interLATA authority to the statutory requirements for license transfers – would be bad policy as well as unlawful.

CompTel asks the Commission to prohibit any SBC/Ameritech CLEC from reselling services of an SBC/Ameritech ILEC. CompTel at 5 n.5. SBC/Ameritech is obligated under the 1996 Act to make its retail services available for resale at wholesale prices on the same terms and conditions to any requesting carrier, which would include any separate SBC/Ameritech CLEC. 47 U.S.C. §§ 202, 251. Because any terms and conditions offered to the CLEC affiliate would be available to other CLECs as well, see id. § 252(i), there is no danger of discrimination in favor of the separate CLEC affiliate.

The Alarm Industry Communications Committee ("AICC") seeks once again to advance its contention that the merger would violate Section 275 of the Act unless the Commission requires, as a condition precedent, that Ameritech divest ownership of its alarm monitoring affiliate, SecurityLink from Ameritech, Inc. ("SecurityLink"), to an independent, non-affiliated

the Commission's program access rules," and inviting commenters who disagree with the rules' scope to litigate them via the program access complaint process).

entity.¹³⁰ The AICC's interpretation of section 275 is incorrect, as the Applicants have demonstrated in various submissions in this proceeding.¹³¹ Both the Applicants and AICC have made written and oral submissions on this legal issue to the Commission's Office of General Counsel. SBC/Ameritech has shown that under section 275(a)(2), SecurityLink may continue to operate its alarm monitoring business once it becomes an affiliate of SBC. SecurityLink will still be an affiliate of the Ameritech BOCs and thus will still be within the scope of the statute's grandfather clause.¹³² AICC's Comments offer no new legal or policy arguments to rebut that conclusion.

CONCLUSION

The comments on the Conditions serve principally to highlight the scope and significance of the Conditions. Parties who seek to block the merger of course oppose the Conditions, yet they are unable to provide any credible argument as to how the Conditions could fail to serve the public interest. SBC and Ameritech continue to believe that the license transfer would serve the public interest, and should be approved, without any conditions. With the proposed Conditions, however, the merger indisputably satisfies any imaginable public interest standard. In the interest of SBC and Ameritech, their employees, CLECs, and consumers, the license transfer Application should be approved expeditiously.

¹³⁰Alarm Industry Communications Committee at 2.

¹³¹See, e.g., Joint Opposition at 88-91; Letter from Antoinette Cook Bush to Magalie R. Salas, April 28, 1999 ("April 28 Letter"); Letter from Antoinette Cook Bush to Magalie R. Salas, April 29, 1999.

¹³²See analysis of Section 275 found in the April 28 Letter at 2-6.

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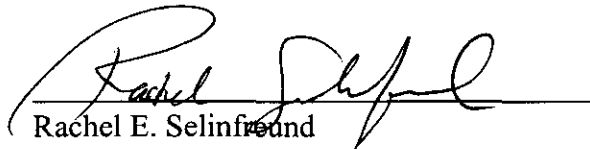
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I, Rachel E. Selinfreund, hereby certify that on this 26th day of July, 1999, I caused copies of the Joint Reply of SBC Communications Inc. and Ameritech Corporation to Comments Regarding Merger Conditions to be served by first-class United States mail, postage prepaid, upon the parties on the attached service list.


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